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ABSTRACT

This policy paper explains the educational rights available to certain students with disabilities and chronic conditions under Section 504 of the Rehabilitation Act of 1973. It describes the federal law and regulations, eligibility criteria, complaint procedures available to enforce the law, and ways that state Title V agencies can collaborate with school personnel. Section 1 introduces the statute and discusses its relationship to the Individuals with Disabilities Education Act as well as responsibilities of educational institutions. The next section focuses on identification of eligible students, including the referral process, obtaining reasonable accommodations and services, the distinction between "health" and "medical" services, and composition of the Section 504 team. The next section addresses application of Section 504 to transition issues, enforcing Section 504, filing individual complaints with the Office for Civil Rights, and resolving complaints. The final section addresses collaboration and considers Title V referrals, expertise for school personnel, providing or contracting for direct health care services, providing care coordination, and building an infrastructure for children with special health care needs. (DB)

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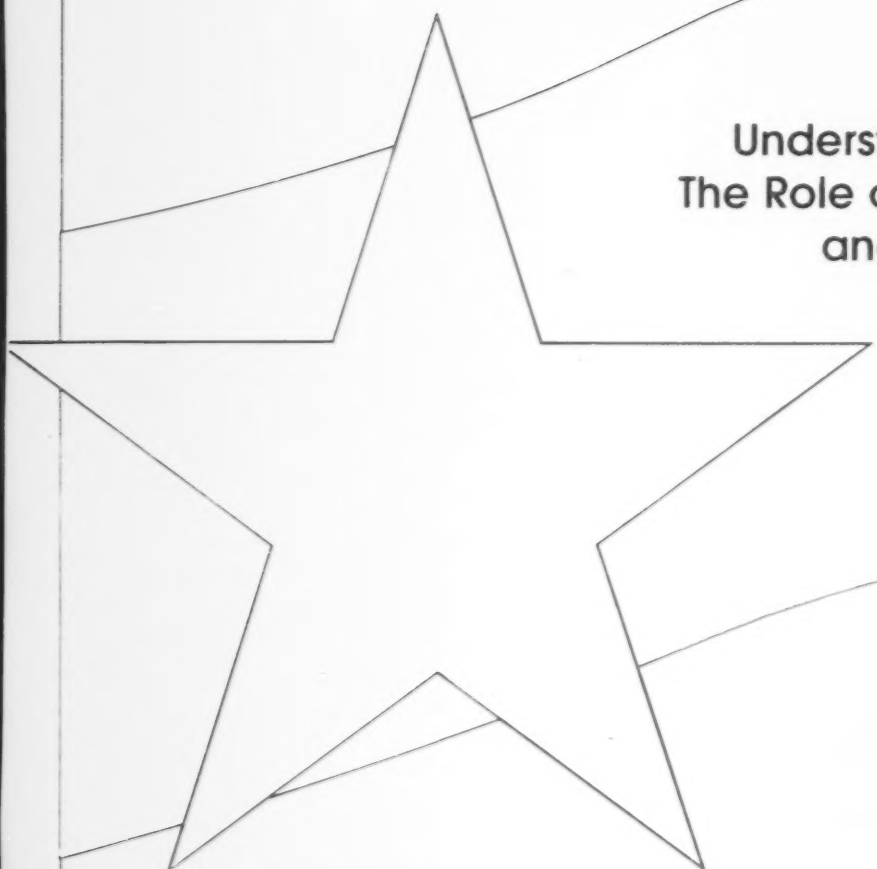
Understanding the 504 Statute: The Role of State Title V Programs and Health Care Providers



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- ***Key Transition Issues for Youth with Disabilities and Chronic Health Conditions***
  by Rhoda Schulzinger, Esq. 1999, First Edition
- ***Understanding the 504 Statute: The Role of State Title V Programs and Health Care Providers***
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Understanding the 504 Statute: The Role of State Title V Programs and Health Care Providers

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Introduction

Section 504 of The Rehabilitation Act of 1973 provides important educational rights, but they often are not well understood by students with disabilities and special health care needs, their families, school personnel, and health professionals. Although the law was enacted over twenty-five years ago, there is still limited awareness about how students with disabilities can use Section 504 to obtain critical accommodations and services in an educational setting.

This policy paper was prepared to help Title V professionals understand the educational rights available to certain students with disabilities and chronic conditions under Section 504. The paper describes the basic components of the Federal law and suggests ways to strengthen collaboration between State Title V agencies and local schools to ensure that eligible students obtain the necessary accommodations and services to support their successful transition from high school to adult life. Specifically, the paper describes the:

- Federal law and regulations;
- Eligibility criteria;
- Complaint procedures available to enforce the law when students are not properly served; and
- Ways that State Title V agencies can share their expertise with school personnel, including helping to refer potentially eligible students and suggesting appropriate accommodations to maintain wellness.

What is Section 504?

Knowing the Law

The Statute

Section 504 of The Rehabilitative Act of 1973, as amended, 29 U.S.C. Section 6794

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination on the basis of disability. It protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. The text of the law says:

> "No otherwise qualified individual with handicaps in the United States... shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (Note that the regulations use the word "handicap." When Congress amended the Rehabilitation Act in 1973, it replaced the word "handicap" with the term "disability," the language used in this document.)

Title 34 of the Code of Federal Regulations (CFR), Part 104

The U.S. Department of Education enforces Section 504 through its Office for Civil Rights [OCR]. All public school districts, institutions of higher education, and state and local education agencies that receive financial assistance from the Department must follow the 504 regulations. The Department of Education regulations apply to four areas: employment practices; program accessibility; preschool, elementary, and secondary education; and postsecondary education. This paper addresses the issues relevant for students with disabilities only in elementary and secondary schools.

The purpose of Section 504 is to ensure that students with disabilities can access the same programs and services that are available to students who do not have disabilities. It may be helpful to think of Section 504 as an effort to "level the playing field" to remove barriers to full participation for students with disabilities and special health care needs.

Relationship to IDEA

Many families and health professionals have heard about The Individuals with Disabilities Education Act [IDEA] and an individualized educational program [IEP]. Many more, however, are unfamiliar with Section 504. It is very important to understand the scope of Section 504, as for some students with disabilities and chronic health conditions, this law provides the only mandate for public school systems to make accommodations to ensure their access to a free appropriate public education.

Section 504 and IDEA are separate federal laws regarding the education of students with disabilities. While all students who qualify for IDEA are also protected by Section 504, the reverse is not true. When students do not qualify for IDEA, they should check their eligibility for accommodations and services under Section 504.

The two laws share a philosophical approach to the education of students with disabilities:

Both laws require students with disabilities to receive a "free appropriate public education" that is provided, to the maximum extent appropriate, together with students who do not have disabilities;

- Both laws require schools to identify all potentially eligible students and establish evaluation procedures to determine eligibility.

Despite this common philosophical basis, the laws have some major differences:

- Unlike IDEA, Section 504 does not list specific groups of eligible students and it covers a much broader group;

- Unlike IDEA, Section 504 defines "appropriate education" as regular or special education and related aids and services that meet the individual educational needs of students with disabilities as adequately as the needs of students who do not have disabilities;

- Unlike IDEA, Section 504 does not provide federal funds to local school districts to ensure that they do not discriminate against students with disabilities;

- Unlike IDEA, Section 504 does not require independent evaluations to determine student eligibility;

- Unlike IDEA, Section 504 requires local school districts to designate an employee to ensure compliance with the law and to provide a grievance procedure for students, their families and employees.

A chart, describing key components of Section 504 and IDEA, illustrates important differences between the two Federal laws.

Key Components: Section 504 and IDEA

Federal Law	Section 504	IDEA
Title	Rehabilitation Act of 1973	Individuals with Disabilities Education Act [IDEA] Amendments of 1997
Purpose	Civil rights law to protect rights of individuals with disabilities in programs and activities that receive Federal financial assistance	Federal statute to provide financial assistance to states to ensure appropriate services for students with disabilities
Funding	Local and state	Local, state, and Federal
Responsible agency in local school district	General education	Special education
Responsible individual in local school district	Section 504 coordinator	Special education director
Eligibility criteria	Students must be qualified individuals with a disability, defined as someone who now has, previously had, or is regarded as having a physical or mental impairment which substantially limits one or more major life activities Major life activities include caring for self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working	Students identified within specific disability categories: mental retardation; impairments in hearing, speech or language, vision or orthopedics; other health impairment; serious emotional disturbance; autism; traumatic brain injury; specific learning disability; deaf-blindness; or multiple disabilities

Federal Law	Section 504	IDEA
Service mechanism	504 plan for necessary accommodations and/or services	Individualized Education Program [IEP] Mandates specific members of IEP team
Evaluation	Requires parental notice for evaluation Requires district to: establish standards and procedures to ensure that tests and other evaluation materials are validated; tailor tests to assess specific educational needs; and properly select and administer tests to reflect student's aptitude and not the level of impairment Requires "periodic" re-evaluations	Requires parental consent for initial evaluation Provides right to request independent educational evaluation Requires re-evaluations at least once every three years
Free appropriate public education [FAPE]	Defined as regular or special education and related aids and services that meet the individual educational needs of students with disabilities as adequately as the needs of students who do not have disabilities	Defined as special education and related services for a program designed to provide "educational benefit"
Procedural safeguards	Requires notice to parent regarding identification, evaluation, or placement Requires notice only for "significant" change in placement	Requires written notice to parent regarding identification, evaluation or placement Requires written notice for any change in placement

Federal Law	Section 504	IDEA
Due process requirements	Requires impartial hearings for parents who disagree about identification, evaluation, or placement	Requires impartial hearings for parents who disagree about identification, evaluation, or placement
Grievance procedures	Requires districts to designate one individual to ensure compliance and to provide grievance procedure	No required grievance procedure or compliance officer
Enforcement	Monitored by U.S. Dept. of Education, Office for Civil Rights [OCR]	Monitored by U.S. Dept. of Education, Office of Special Education and Rehabilitative Services [OSERS]

Adapted from *Serving Students with Special Health Care Needs in the School Setting: Legal and Implementation Issues*, prepared by John Copenhaver, Mountain Plains Regional Resource Center, Logan UT (February 1998) and *Training Manual: Nondiscrimination on Basis of Disability*, School Board of Alachua County, Gainesville, FL, prepared by Thomas L. Wittmer, Esquire, and Marjorie I. Cuthbert, Ph.D. (1996).

Responsibilities of Educational Institutions

Elementary and Secondary

34 CFR Section 104.32

34 CFR Section 104.33(a)

34 CFR Section 104. (b)

34 CFR Section 104.34 (a)

Under the 504 regulations, elementary and secondary schools that receive Federal financial assistance have certain responsibilities for their qualifying students with disabilities. The schools must:

- Identify and locate, on an annual basis, all unserved children with disabilities;
- Provide a "free appropriate public education" to all students with disabilities regardless of the nature or severity of the disability;
- Design educational services to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities;
- Ensure that students with disabilities are educated with students who do not have disabilities to the maximum extent appropriate to their needs;

- Establish nondiscriminatory evaluation procedures to avoid the inappropriate education that may result from the misclassification or misplacement of students; — 34 CFR Section 104.35
- Establish nondiscriminatory placement procedures; — 34 CFR Section 104.35
- Establish procedural safeguards to enable parents to participate in decisions affecting the evaluation and placement of their children; — 34 CFR Section 104.36
- Provide students with disabilities an equal opportunity to participate in non-academic and extracurricular services and activities. — 34 CFR Section 104.37

34 CFR Section 104.7 (a)

To ensure that schools meet these obligations, school districts employing fifteen or more people are required to assign someone, commonly known as the 504 coordinator or compliance officer, to ensure compliance with the law.

Although the regulations clearly state the districts' responsibilities for 504-eligible students, they do not specify how individual schools can meet these obligations. Often the school personnel do not have the requisite understanding about the student's disability or chronic health condition to suggest appropriate program modifications that could support 504-eligible students. This is an area where State Title V staff can provide useful assessment and health care information about the student and work with the appropriate school personnel to suggest accommodations that can be provided for eligible students with disabilities.

Post-Secondary

Although post-secondary institutions have responsibilities to students with disabilities, that topic is beyond the scope of this paper. However, it is important for students with disabilities, their families, and health care professionals to know that the obligations of post-secondary institutions are different than those described here for elementary and secondary schools.

34 CFR Sections 104.41-47

Available at www.ed.gov/offices/ocr/auxaids.html

For additional information, read Subpart E of the 504 regulations. In addition, the Department of Education, Office of Civil Rights has a useful 13-page pamphlet, *Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA*. The pamphlet was revised in September 1998.

Identifying Eligible Students

34 CFR Section 104.3(j)

Section 504 protects the rights of students with visible and invisible disabilities as well as chronic illness. To qualify for the protections under Section 504, students must meet the definition of an "individual with a disability":

- Someone who has a physical or mental impairment that substantially limits one or more major life activities;
- Someone who has a record of such an impairment; or
- Someone who is regarded as having such an impairment.

The regulations also define two key terms that appear in its definition of an individual with a disability:

34 CFR Section 104.3(2)(I)

- "Physical or mental impairment" is defined as (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- "Major life activities" are defined as "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

34 CFR Section 104.3(2)(ii)

34 CFR Section 104.3(k)

To be protected from discrimination under Section 504, an "individual with handicaps" must be "otherwise qualified." The regulations define "otherwise qualified" for public preschool, elementary, secondary, or adult educational services as an individual with a disability who is:

- Of an age during which people who do not have disabilities are provided such services;
- Of any age during which it is mandatory under state law to provide such services to people with disabilities; or
- Of an age for whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act [IDEA].

Making Referrals

Schools are required to have a Section 504 identification process to ensure that all eligible children and youth are served under the law. However, other individuals — including parents, teachers and professionals from other child-serving systems — may refer students who might qualify. Referrals should be made to the school's Section 504 coordinator so he/she can determine if particular students are eligible. Older students may refer themselves if they believe that their disability or chronic health condition requires specific accommodations.

State Title V health professionals are well-situated to help identify and refer students who may qualify for Section 504 services, but are not currently receiving them. It is important to remember that students who qualify for 504 services will remain in general education, but may be eligible for "related services" that help provide equal access to the classroom and other school activities.

Examples of Students Who May Qualify for 504 Accommodations

- Students who miss school frequently or for extended periods of time because of health-related reasons, including students who miss class time or have less study time because of time required for health care procedures or therapies;
- Students who have less concentration because of the emotional/physical effects of the illness, e.g., pain, fatigue, or anxiety related to ongoing medical procedures or treatments;
- Students who have side effects from taking prescribed medication;
- Students who need assistive equipment to participate in classroom and school activities, e.g., communication devices;
- Students who are assisted by medical technology, e.g., tube feedings, intravenous lines, clean intermittent catheterization, dialysis, and respiratory devices like ventilators;
- Students who are evaluated for IDEA, but found ineligible for special education services, including students who have learning disabilities, developmental delays, or cognitive deficits that do not qualify under IDEA;
- Students who return to school after a serious illness or injury;
- Students who are suspected of having a disability, any chronic health condition, or substance abuse problem;
- Students who have difficulty completing tests in prescribed time periods;
- Students who cannot take oral tests because of impaired communication skills.

Obtaining Reasonable Accommodations and Services

34 CFR 104.33(b)(2)

School districts are not required by the 504 regulations to develop written plans for eligible students as IDEA requires in individualized education programs [IEP]. However, the regulations state that implementation of an IEP is "one means of meeting the standard" required by Section 504. School administrators often want written plans that can document what adjustments or modifications are made to ensure that the individual educational needs of 504-eligible students are met.

34 CFR 104.35(c)

The regulations state that, when making placement decisions, the school or district should "draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior." Parents are not required to be consulted, but it is considered a wise practice to do so. This is another area where State Title V personnel have expertise that can help schools make appropriate decisions regarding placement and necessary accommodations.

Range of Accommodations and Services

The 504 statute and its regulations do not provide a "laundry list" of accommodations that schools must provide qualifying students. The intention of the law is to provide individuals with disabilities the right to obtain the same programs and services that are available to individuals without disabilities. In the context of educational institutions, qualifying students must receive the necessary accommodations to ensure their equal access to the educational programs and services.

The 504 coordinator should work with qualifying students — and their families — to identify the accommodations that will allow students to participate in classroom and school activities.

Students may need reasonable accommodations in one or more of the following areas:

- Physical arrangement of classroom;
- Lesson presentation;
- Assignments in classroom and homework;
- Test taking;
- Organizational skills;
- Behaviors;
- Medication or health care procedure; or
- Discipline.

Examples of Reasonable Accommodations for Eligible 504 Students

- Allowing rest periods during school hours or short breaks between assignments for students who are easily fatigued;
- Scheduling core subjects during times of day when student is least fatigued or affected by medication;
- Providing an extra set of books for students who are frequently absent to minimize disruption of academic work;
- Providing extra time to meet necessary academic requirements to graduate, e.g., summer school or an extra year;
- Arranging necessary transportation for class field trips and after-school activities;
- Providing access to health care during field trips and after-school activities;
- Modifying volume of schoolwork while maintaining appropriate standards of performance;
- Adapting or modifying school environment or class activities so students with disabilities are included with other classmates;
- Seating student near the teacher or other students who are positive role models;
- Asking teacher to stand near the student when giving directions or presenting lessons;
- Providing written outline or visual aids during lesson presentation;
- Providing peer note taker;
- Allowing student to tape record assignments and/or homework;
- Breaking assignments into smaller tasks.

Adapted from *Children and Youth Assisted by Medical Technology in Educational Settings: Guidelines for Care* by Stephanie Porter, Marilynn Haynie, Timaree Bierle, Terry Heintz Caldwell and Judith S. Palfrey (Paul H. Brookes, 1997) and *Training Manual: Nondiscrimination on Basis of Disability*, School Board of Alachua County, Gainesville, FL, prepared by Thomas L. Wittmer, Esquire, and Marjorie I. Cuthbert, Ph.D. (1996).

Distinction Between "Health" and "Medical" Services

A major issue for students with disabilities and chronic health conditions is the distinction between "medical" and "educational" services when health care services are needed during school hours. Over the years, families and school districts have asked courts to resolve disputes regarding the district's obligation to provide health services, appropriate personnel to provide these services, and payment for the services.

The debate generally centers on whether particular health services qualify as "related services" that students with disabilities are entitled to receive under both IDEA and Section 504. However, the two statutes provide different degrees of guidance to school districts about the scope of their legal obligations to students on this issue. Although a full exploration of the issue is beyond the scope of this paper, some discussion is necessary to understand the current status.

34 CFR Section 300.24

The IDEA regulations specifically define "related services" and make it clear that "medical services" are only required for diagnostic or evaluation purposes. Medical services are defined as those that must be provided by a licensed physician. In contrast, the 504 regulations do not define "related aids and services." The 504 regulations state that school districts must provide a "free appropriate public education" to qualified individuals with disabilities and simply define "appropriate" as "regular or special education and related aids and services."

One can infer from the general intent of Section 504 that school districts must decide what specific "related aids and services" are needed to ensure that a student has equal access to programs and activities based on an individual assessment of his/her needs. The schools' obligation to provide this assistance is not, however, open-ended. This issue was addressed by the U.S. Supreme Court in its first case regarding Section 504, *Southeastern Community College v. Davis*. In *Davis*, the Court ruled that the law does not compel educational institutions to "make substantial modification in their programs" or to impose "undue financial and administrative burdens" to provide an equal opportunity for individuals with disabilities to participate in educational programs and activities.

422 U.S. 397, 1979
442 U.S. at 405
442 U.S. at 412

Rothschild v. Grottenthaler, 907 F.2d 286, at 293 (1990)

One Federal Court of Appeals echoed this language by stating the need to "strike a balance between the rights of the... (individuals with disabilities) and the legitimate financial and administrative concerns of the School District." Yet in the same decision, the Court of Appeals acknowledged that:

907 F.2d at 293

> "a recipient may, however, be required to make 'reasonable' modifications to accommodate an otherwise qualified handicapped individual... Section 504 requires some degree of positive effort to expand the availability of Federally funded programs to handicapped persons otherwise qualified to benefit from them."

One can conclude that "reasonable" requests for health services under Section 504 should be accommodated when they do not impose "undue" costs or require extensive modifications in existing school programs. There is support for this position from the two decisions by the U.S. Supreme Court when it addressed the issue of whether certain "health services" qualify within the definition of "related services." Although both decisions relied upon the IDEA statute and regulations, the Supreme Court ruled in each case that the school districts had an obligation to provide the requested health service to ensure that the students with disabilities were properly integrated into the public school program.

In *Tatro*, the Supreme Court ruled that the school district was required to provide clean intermittent catherization [CIC] services for Amber Tatro because it qualifies as a "related service" that she needs to benefit from special education. Although the Court's decision relied upon IDEA, it noted that "(a) service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned." This language is equally applicable to the Congressional intent that Section 504 provide students equal access to Federally funded educational programs.

Irving Independent School District v. Tatro, 468 U.S. 883

468 U.S. at 891

The Supreme Court also noted in *Tatro* that, when the case was before the Court of Appeals, the lower court ruled that the school district's refusal to provide Amber with CIC "effectively excluded her from a Federally funded educational program in violation of Section 504." In its opinion, the Court of Appeals acknowledged the "substantial adjustment" and "undue financial and administrative burdens" limitations from Davis, but ruled that "Amber will realize the principal benefits of the school district's program once CIC is provided." In its *Tatro* decision, the Court of Appeals indicated that reasonable requests for services that are necessary for students to participate in educational programs should be accommodated.

468 U.S. at 887

625 F2d 557, at 565 footnote 19

More recently, in March 1999 in *Garret F.*, the Supreme Court ruled that school districts must provide health care services for a student who is ventilator dependent and requires nursing services while in school. Again using IDEA, the Supreme Court ruled that the health services needed by Garret qualify as "related services" that enable him to remain in school during the day. Writing for the Court in a seven to two decision, Justice Stevens concluded:

Cedar Rapids Community School District v. Garret F., 119 S. Ct. 992

> This case is about whether meaningful access to the public schools will be assured... . It is undisputed that the services at issue must be provided if Garret is to remain in school... the District must fund such 'related services' in order to help guarantee that students like Garret are integrated into the public schools.

119 S. Ct. at 1000

As a result of the *Garret F.* decision, school districts can no longer claim that IDEA does not require them to provide health services that eligible students may need throughout the school day. An analogous argument can be made for 504-eligible students who need health services to have access to benefits and services comparable to those available to their classmates who do not have disabilities.

Composition of 504 Team

34 CFR Section 104.35(c)(3)

The 504 regulations state that the school districts must "ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options."

Although the regulations do not mandate specific individuals to involve when considering necessary accommodations or services, they do suggest that the discussion should include a range of individuals who know the student's capabilities and understand the impact of his/her disability or chronic condition. Among the personnel that the school should include are:

- Various teachers;
- Counselor;
- School nurse;
- Related services providers; and
- School psychologist, if appropriate.

The family should be included in this discussion, including the student whenever possible. The family may want others included such as a health professional or care coordinator from Title V. The State Title V staff can provide important information about what medications, procedures, equipment, and diet the student needs daily so that the education team has a complete picture of how the student's health condition affects his/her life both in and out of school.

Using Section 504 to Address Transition Issues

Since Section 504 does not address transition services as a specific issue of concern for students with disabilities, there is no statutory or regulatory guidance to schools about their responsibility in this area. In contrast, current IDEA regulations require schools to address the transition needs of students at two specific times in their education:

34 CFR Section 300.347(b)(1)

- Beginning at age fourteen, or younger if determined appropriate by the IEP team, schools must include a statement of the transition service needs in a student's IEP. The statement must be updated annually and focus on how to appropriately plan the student's educational program.

- Beginning at age sixteen, or younger if determined appropriate by the IEP team, schools must include a statement of needed transition services in a student's IEP.

34 CFR Section 300.347(b((2)

Transition services in IDEA are clearly defined as "a coordinated set of activities... that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation." The IDEA law directs schools to plan a range of activities that will provide students with the knowledge and skills that they need to live independently as adults.

34 CFR Section 300.29(a)

As a result of the new IDEA regulations, OCR is now reviewing its 504 policies on "free appropriate public education" to determine if any changes are needed in its guidance for schools. It remains to be seen if any new guidance will be issued and, if so, whether it will specifically direct schools to address transition issues for 504-eligible students who graduate from high school.

Although transition services are not mandatory 504 services, it is useful for State Title V programs to consider the important areas that will help eligible students with disabilities make a successful transition from high school to the work force or college. When working with 504-eligible students with disabilities, State Title V personnel should ask:

- Do students receive instruction in the mandatory subjects so they can graduate with their peers who do not have disabilities?
- Do students receive related services that provide full access to classroom and after school activities?
- Do students have access to the same community experiences that are available to their peers who do not have disabilities?
- Do students receive necessary accommodations to participate in any employment-related experiences that are available to their peers who do not have disabilities?
- Do students have access to opportunities where they can acquire daily living skills to live independently in the community?
- Do students receive the information they need about 504 services available at state universities and community colleges?

Enforcing 504

When parents or students believe that a student has experienced discrimination on the basis of disability, they have the right to file a grievance. A complaint should first be filed with the school or district Section 504 coordinator. There is no requirement under Section 504, unlike IDEA, that the state education agency establish a complaint system.

A complaint can also be filed with the U.S. Department of Education Office for Civil Rights [OCR], which has the responsibility to enforce Section 504 along with other civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex or age. These civil rights laws affect all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive Federal financial assistance from the Department.

Under Section 504 and the other civil rights laws that prohibit discrimination, programs and activities receiving Department of Education funds must be operated in a nondiscriminatory manner. These programs and activities include, but are not limited to:

- Admissions;
- Recruitment;
- Financial aid;
- Academic programs;
- Student treatment and services;
- Counseling and guidance;
- Discipline;
- Classroom assignment;
- Grading;
- Vocational education;
- Recreation;
- Physical education;
- Athletics;
- Housing;
- Employment.

To ensure that Section 504 and other civil rights laws are enforced, OCR investigates individual complaints, conducts compliance reviews and provides technical assistance. OCR has a main office in Washington, DC, and twelve enforcement offices throughout the country.

Contact information for the regional enforcement offices is available at www.ed.gov/offices/OCR

Filing Individual Complaints with OCR

The Federal law allows anyone who believes that an educational institution receiving Federal financial assistance has discriminated against someone — on the basis of race, color, national origin, sex, disability or age — to file a complaint. An individual or organization may file a complaint on behalf of another person or group of individuals. Complaints must be filed within 180 calendar days of when the alleged discrimination occurred. OCR will allow extensions if there are reasons why "for good cause" the complaint could not be filed within that time frame.

When filing a formal complaint with OCR, certain written information must be submitted in writing in a letter or on the Discrimination Complaint Form available from the Regional Offices. The information must include:

- Complaintant's name and address (a daytime telephone number is helpful, but not required);
- A general description of the person(s) or class of people injured by the alleged discrimination (names of the injured individual[s] are not required);
- The name and location of the institution that committed the alleged discrimination; and
- A description of the alleged discrimination in sufficient detail to explain what happened, when it took place, and the basis for it (e.g., race, color, national origin, sex, disability, or age).

The Federal law prohibits retaliation against a person who makes a complaint, testifies, assists or participates in any manner in an investigation or proceeding under any of the five civil rights statutes, including Section 504.

Complaints may be filed about disability discrimination in any of the programs and activities provided by the educational institution. Examples of when students with disabilities may file 504 complaints include:

- Students with disabilities are not properly identified for accommodations and/or services;
- Students with disabilities do not have access to school facilities and programs;

- Students with disabilities do not have access to appropriate education services;
- Students with disabilities do not receive services in the least restrictive setting consistent with their educational needs;
- Students with disabilities do not receive the necessary academic adjustments and modifications;
- Students with disabilities do not receive the appropriate auxiliary aids for their impaired sensory, manual or speaking skills.

Resolving Complaints

Over the past decade, the most common complaints filed with the Department of Education are about disability discrimination. OCR reports that in FY 98, it received 4,847 individual complaints of which the majority were filed against elementary or secondary schools. Although OCR does not have data about the number of complaints filed against elementary or secondary schools that were based on disability, it believes that such complaints are typical.

OCR resolves individual complaints through three mechanisms: resolutions between the parties; negotiated agreements; and enforcement.

- **Resolution between Parties.** OCR facilitates a resolution between the school district (the recipient of Federal funds) and the student to resolve the allegations that prompted the complaint. OCR does not approve or sign any agreement that is reached between the parties.
- **Negotiated Agreements**. OCR investigates the complaint to determine if there is evidence of discrimination. If the complaint is substantiated, then OCR will issue a letter describing the specific steps that the school district agrees to take to resolve the complaint. OCR monitors the written agreement to ensure compliance.
- **Investigation and Enforcement**. When OCR finds evidence of discrimination and cannot obtain voluntary compliance from the school district, it will initiate the process of terminating Federal funds. This happens very infrequently.

How Can Schools and Title V Collaborate to Support Successful Transition?

Under Federal law, schools have the responsibility to provide students with disabilities and chronic conditions an appropriate public education. However, other publicly funded agencies also can play an important role in helping to identify and serve these students so that they can maximize their educational experience and make a successful transition from high school.

State Title V agencies have much to offer schools in the effort to enhance the transitional years of students with disabilities and chronic health conditions. Based on their own philosophy to provide family-centered, community-based, coordinated care, State Title V personnel could help advocate for and coordinate the range of services that students with special health care needs must have to benefit from their high school education.

The process of establishing strong working relationships between State Title V agencies and local schools, school districts, and state departments of education and vocational rehabilitation is very time-consuming. Sadly, building these essential collaborations can sometimes be contentious — especially in regard to issues of fiscal responsibility. However, these collaborations are critical to help ensure that students with special health care needs receive the educational services and accommodations to which they are entitled.

Title V Referrals

Section 504 requires schools to have an identification process to ensure that all eligible children and youth are located. Schools can receive referrals from other child-serving professionals who believe that certain students may qualify for reasonable accommodations and/or services because of their disability or chronic health condition.

Health professionals working with State Title V agencies are well-situated to help identify students who may qualify for Section 504 services, but are not currently receiving them. State Title V agencies could refer potentially eligible students by asking health professionals to consider the following questions that might help students qualify under Section 504:

- Does the student have a physical or mental impairment?
- Does the student have a record of such an impairment?
- Is the student perceived as having an impairment?

If State Title V personnel believe the answer to any of these three questions is "Yes," then the student may be eligible. Ask if the student is receiving 504 services.

If the student is not receiving these services, ask the parents if they want their child evaluated for 504 eligibility. Contact the school superintendent for the name of the 504 coordinator/compliance officer at the student's school or district.

To qualify under 504, the student's impairment must substantially limit a major life activity. State Title V personnel can provide helpful information for the school team to make its Section 504 determination by providing information for these questions:

- How does the student's impairment substantially limit one or more of the student's major life activities? Under Section 504, these activities are defined as caring for self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

- What impact does the student's impairment have on his/her learning?

- If the school finds that the student qualifies under Section 504, what accommodations and/or services do State Title V professionals recommend to help the student participate in the classroom and school activities with his/her classmates? This information can supplement what teachers, the school nurse and others from the school may suggest.

Title V Expertise for School Personnel

State Title V personnel have expertise that can help school personnel meet the needs of 504-eligible students. The role of State Title V agencies will vary among states depending on how they operate, but all of them have important expertise to share with school districts to help support the successful transition of students with disabilities into adult life.

State Title V agencies could consider ways that they can help 504-eligible students and their families when they are:

- Providing or contracting for direct health care services; and/or

- Providing care coordination; and/or

- Building an infrastructure for children with special health care needs.

Providing or Contracting for Direct Health Care Services

A small number of State Title V agencies provide direct clinical services or contract with providers of comprehensive medical services to children with chronic health conditions. The medical professionals who work for State Title V agencies, either directly or through contracts, could offer their expertise — especially regarding health-related issues — to school personnel who must decide appropriate accommodations for 504 eligible students.

RECOMMENDATION: A Title V health professional could join the school-based teams working with students to develop their 504 plan.

Title V and Schools: Providing Direct Health Care Services for 504 Students

- Identify students with disabilities and chronic health conditions who may be eligible for Section 504 accommodations and/or services, but are not currently receiving them. Contact the school superintendent for the name of the Section 504 coordinator at the student's school to make the referral.

- State Title V nurses could meet regularly with school nurses about how to accommodate the needs of specific students or how school personnel can modify classroom and other activities for certain special health care needs or chronic conditions.

- Organize workshops for youth with disabilities and chronic health conditions to learn self-management skills for their own medical needs. As these children mature, they must assume responsibility — to the greatest extent possible — for their own health care needs. This requires providing opportunities for students to acquire the self-advocacy skills they need to supervise their own medical care. Learning how to shift responsibility from their parents, health care professionals, and educational personnel is a special challenge for students with disabilities.

- Establish a referral list for young people who need to transition from their specialized pediatric health care. Collect information about adult medical specialists who are responsive to the needs of this population and respect the philosophy of family-centered care.

- Provide in-service training for teachers and other school personnel (e.g., administrators, school nurses, counselors, bus drivers) about specific disabilities or chronic health conditions to broaden their knowledge and share information about the impact on student's daily activities.

- Identify appropriate personnel from the State Department of Vocational Rehabilitation and the student's school to participate in the State Title V clinic team that meets to discuss the range of services the young person needs.

Providing Care Coordination

Most State Title V agencies do not provide direct services, but allocate the bulk of their resources to providing information and referral for children with special health care needs. A number of special issues arise for students when they enter their transition years and must begin to plan how to integrate themselves into the educational, employment, social, and community systems beyond middle and high school.

RECOMMENDATION: A Title V care coordinator could join the school teams working with students and their families to develop 504 plans. The care coordinator could help broker the necessary partnership between professionals who are working to address the young person's educational and health care needs.

Title V and Schools: Providing Care Coordination for 504 Students

- Provide students and their families information about Section 504 and what educational rights it provides students with disabilities and chronic health conditions.

- Establish a formal referral system with appropriate professionals and Federal, state, and local organizations and agencies that serve young people. Among the public and private agencies that young people may turn to are: vocational rehabilitation agencies; independent living programs; Social Security Administration [SSA]; and state agencies for medical assistance, mental health, and developmental disabilities services.

- Contact the disability specialists at the state university and local community colleges. Ask them to share information with students and their families about what must be done to qualify for 504 accommodations and services in their educational institutions.

- Offer transition workshops for young people, their families, and friends. These workshops can provide an informal atmosphere to exchange information and peer-to-peer advice about a range of issues that arise when people make the transition from adolescence into adulthood. Participants may want to discuss how to explore different independent living options, how to live safely in the community, sexuality, how to obtain individual support while remaining independent, how to access necessary assistive technology, eligibility criteria for publicly funded health programs, and how to find resources to meet their mental health needs.

- Organize workshops for youth with disabilities and chronic health conditions to learn independent living skills. To function on their own in the community, many of these young people need to develop independent living skills such as navigating public transportation, using ATM machines, and shopping for groceries. These workshops also can provide opportunities for young people to strengthen their social skills and develop greater self-esteem.

- Arrange an Annual Transition Forum for families served by the Special Health Care Needs Program when their children become teenagers. Invite speakers who can address major topics of concern for the group. At the Forum, students should develop transition plans with their families that the Title V care coordinator can help refine and monitor over the next several years. Students should re-examine these initial transition plans annually to evaluate progress, make necessary changes, and determine what must be done that year to help achieve their goals. By evaluating the plan, students and their families can determine what accommodations and/or services are needed from appropriate service providers, including their schools.

- Assign Title V care coordinators to work with youth in their transition years and their families to ensure that different plans developed for the student complement each other. Students with disabilities often face multiple planning processes through the school system, the state rehabilitation agency, and Title V or other health care providers. Unless properly coordinated, these plans are only "paper exercises" that do not result in the student receiving meaningful services.

- Ask Title V care coordinators to spend one day a week in schools where they can meet with the school nurse — and if necessary, any teachers or administrators — to review issues arising from the schools' efforts to address the educational needs of 504-eligible students.

Building an Infrastructure for Children with Special Health Care Needs

In many states, there is no reliable system in place that ensures that students with disabilities have access to the information and services that they need when they graduate from high school.

RECOMMENDATION: Title V representatives could work with individual schools and school districts to increase the understanding of how Title V can support school efforts to make reasonable accommodations under Section 504 that are appropriate for students with special health care needs.

www.ed.gov/offices/ocr

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Title V and Schools: Building Infrastructure for Transition Services for 504 Students

- Inform policymakers, service providers, and business leaders about the special transition issues faced by this population of young people.
- Provide professional seminars for school district administrators and Section 504 coordinators to learn about ways to provide reasonable accommodations to meet the learning needs of students with disabilities and chronic health conditions.
- Sponsor workshops for physicians, nurses, and other medical personnel working with Title V eligible children about Section 504 so they can help refer potentially eligible students who are not currently served.
- Recruit businesses that want to provide employment opportunities for young people with disabilities.
- Teach parents how to foster their children's independence so that, as the students mature, they can develop greater independence, especially for their own medical care.
- Develop interagency agreements with appropriate state and local agencies (e.g., State Education, local school districts, Vocational Rehabilitation, Employment, Developmental Disabilities, Mental Health, Medical Assistance, Children with Special Health Care Needs). These agreements must establish a formal referral system between the appropriate agencies to ensure that students receive all necessary services. Interagency agreements must designate programmatic and financial responsibilities. These agreements can provide guidance to agencies that traditionally have been reluctant to address the needs of students, e.g., vocational rehabilitation agencies that have not served large numbers of young people under age sixteen.

Appendix: Additional Resources

The Department of Education has free publications that can either be downloaded or ordered from its Home Page (www.ed.gov). The 504 regulations are also available there.

Ordover, Eileen. *Overview: Education Rights of Children with Disabilities Under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.* December 1998. The Center for Law and Education has other publications about the educational rights of students with disabilities that may interest readers.

Rosenfeld., S. James *Section 504 and IDEA: Basic Similarities and Differences.*

Notes

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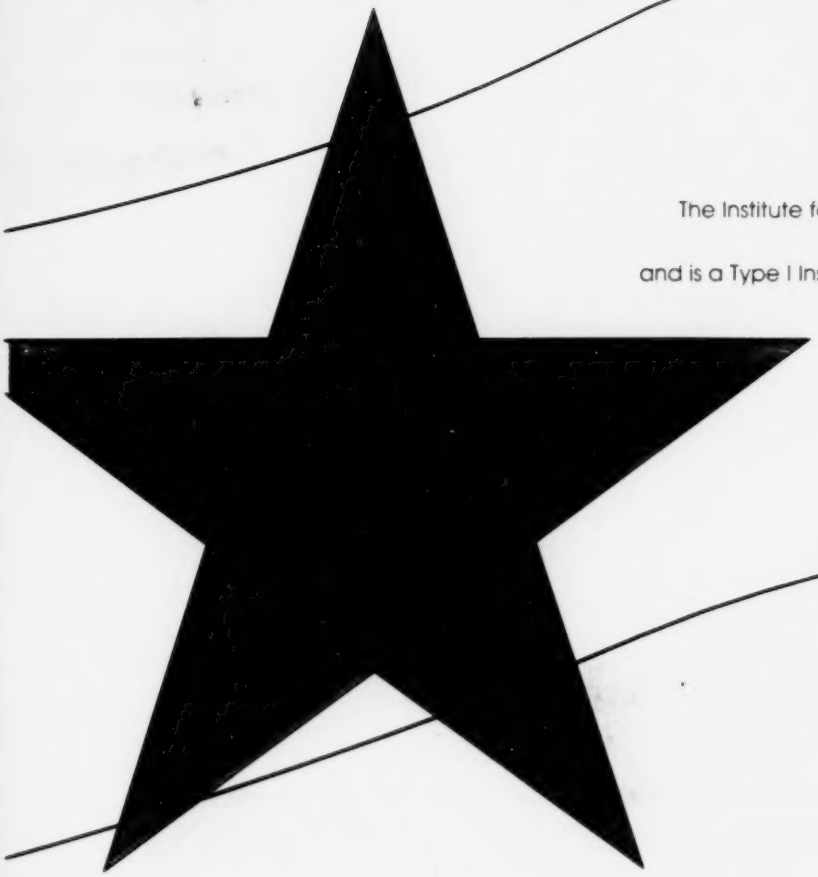

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